

IN THE COURT OF COMMON PLEAS
PIKE COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO
30 E. Broad Street
Columbus, Ohio 43215

Plaintiff,

v.

W.D. MILLER ENTERPRISES, L.L.C.,
formerly known as Miller Lumber
Company,
P.O. Box 160
1617 Laparrell Road
Lathem, Ohio 45649
c/o statutory agent

and

DOUG MILLER,
In his personal capacity and doing
business as W.D. Miller Enterprises L.L.C.,
P.O. Box 160
1617 Laparrell Road
Lathem, Ohio 45649

and

FRED MILLER,
In his personal capacity and doing
business as Miller Lumber Company,
1617 Laparrell Road
Lathem, Ohio 45649

Defendants.

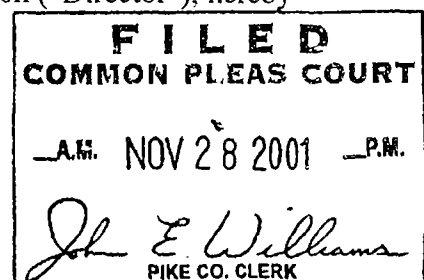
CASE NO. 493 CIV-01

JUDGE

COMPLAINT FOR
INJUNCTIVE RELIEF
AND CIVIL PENALTY



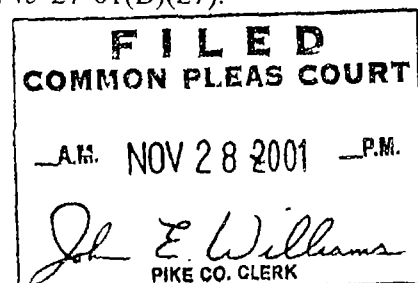
The State of Ohio, by and through its Attorney General, Betty D. Montgomery, at
the written request of the Director of the Environmental Protection ("Director"), hereby



institutes this action to enforce Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder. Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. W.D. Miller Enterprises ("Defendant W.D. Miller"), with its principal place of business at 1617 Laparrell Road, Lathem, Ohio 45649, Pike County, Ohio, is licensed to do business in the State of Ohio.
2. Defendant W.D. Miller is a "person" as defined by R.C. 1.54, 3734.01(G) and 3704.01(O); and Ohio Adm. Code 3745-15-01(U) and 3745-27-01(B)(27).
3. From April 30, 1999 until present, Defendant W.D. Miller was the "owner" and/or "operator," as defined by Ohio Adm. Code 3745-15-01(T), 3745-27-01(B)(24) and 3745-27-01(B)(25), of a solid waste recycling facility, located at 1617 Laparrell Road, Lathem, Pike County, Ohio (the "Facility").
4. Defendant Doug Miller, both as an individual and d.b.a. W.D. Miller Enterprises, L.L.C. ("Defendant Doug Miller") is a "person" as defined by R.C. 1.54, 3734.01(G) and 3704.01(O); and Ohio Adm. Code 3745-15-01(U) and 3745-27-01(B)(27).
5. From on or about April 30, 1999 until present, Defendant Doug Miller was the "owner" and/or "operator," as defined by Ohio Adm. Code 3745-15-01(T), 3745-27-01(B)(24) and 3745-27-01(B)(25), of the Facility.
6. Defendant Fred Miller, both as an individual and d.b.a. Miller Lumber Company ("Defendant Fred Miller"), is a "person" as defined by R.C. 1.54, 3734.01(G) and 3704.01(O); and Ohio Adm. Code 3745-15-01(U) and 3745-27-01(B)(27).



7. From at least 1993 to on or about April 30, 1999, Defendant Fred Miller was the "owner" and/or "operator," as defined by Ohio Adm. Code 3745-15-01(T), 3745-27-01(B)(24) and 3745-27-01(B)(25), of the Facility.

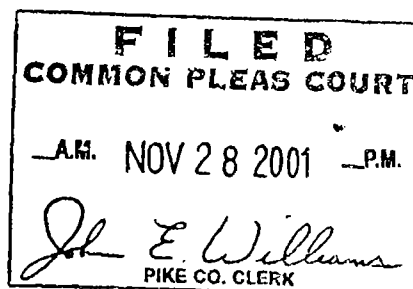
8. On or about September 1993, Defendant Fred Miller entered into a contract with a third party to remove waste saw dust, waste particle board, baghouse dust, and other wood products from said third party.

9. R.C. 3734.01(E) defines "solid wastes" to include such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris.

10. The waste saw dust, waste particle board, baghouse dust, and other wood products removed from said third party's manufacturing operations constitute solid wastes.

11. As part of its solid waste recycling operations, Defendant W.D. Miller and Defendant Doug Miller operate the following emissions units: a sawdust/woodchip storage, loading, and unloading unit (identified as air contaminant source F001); a tub grinder (identified as air contaminant source F002); and unpaved roadways and parking areas (identified as air contaminant source F003).

12. The operation of these units causes the emission of "particulate matter" as that term is defined by Ohio Adm. Code 3745-17-01(B)(12). Particulate matter is an "air contaminant" as that term is defined by R.C. 3704.01(B) and Ohio Adm. Code 3745-15-01(C).



13. Because the sources identified in Paragraph 11 above emit air contaminants, they are considered to be "air contaminant sources" as that term is defined by R.C. 3704.01(C) and "sources" as that term is defined by Ohio Adm. Code 3745-15-01(W).

14. Pursuant to Civ.R. 8(A), this Complaint seeks relief in excess of twenty-five thousand dollars (\$25,000.00).

15. The allegations in paragraphs one through fourteen are incorporated into each count of this Complaint as if rewritten therein.

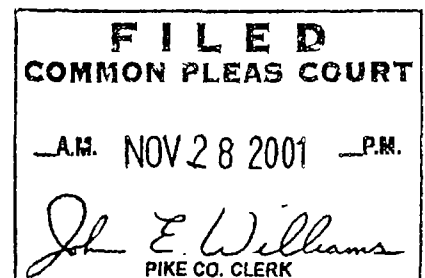
COUNT ONE

**FAILURE TO COMPLY WITH
PERMIT TERMS AND CONDITIONS**

16. R.C. 3704.05(G) provides that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704. The rules referenced in this complaint were issued, adopted, or made under R.C. Chapter 3704.

17. R.C. 3704.05(C) provides that no person who is the holder of a permit issued under division (F) or (G) of section 3704.03 of the Revised Code shall violate any of its terms or conditions.

18. On July 19, 1995, the Director issued Miller Lumber Company a Permit to Install ("PTI"), with permit number 06-4142 for sources F001, F002, and F003. PTI 06-4142 was issued under R.C. 3704.03 (F) or (G) and Ohio Adm. Code 3745-31-02. On April 23, 1997, a modification to PTI 06-4142 was issued.



19. PTI 06-4142 includes a special term and condition that provides that there shall be no visible particulate emissions from source F001 except for a period of time not to exceed one minute during any sixty-minute observation period.

20. From on or about October 22, 1999 until present, Defendants violated the terms and conditions of PTI 06-4142 by failing to prevent visible emissions from source F001 except for a period of time not to exceed one minute during any sixty-minute observation period.

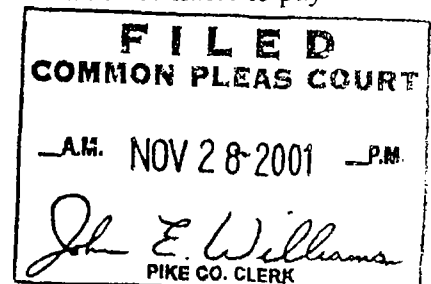
21. PTI 06-4142 includes a special term and condition that requires Defendants to minimize or eliminate visible particulate emissions from source F002.

22. From on or about October 22, 1999 until present, Defendants violated the terms and conditions of PTI 06-4142 by failing to minimize or eliminate visible emissions from source F002.

23. PTI 06-4142 includes a special term and condition that provides that there shall be no visible particulate emissions from source F003 except for a period of time not to exceed three minutes during any sixty-minute observation period.

24. From on or about October 22, 1999 until present, Defendants violated the terms and conditions of PTI 06-4142 by failing to prevent visible emissions from source F003 except for a period of time not to exceed three minutes during any sixty-minute observation period.

25. Acts alleged in this count constitute violations of PTI 06-4142, Ohio Adm. Code Rule 3745-31-02(A)(3), and R.C.3704.05(C) for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendants are liable to pay



the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of the violation, pursuant to R.C. 3704.06(C).

COUNT TWO

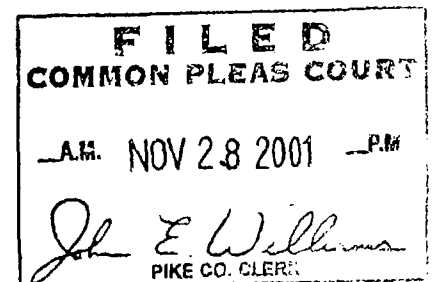
FAILURE TO REPORT MALFUNCTION OF EQUIPMENT

26. R.C. 3704.05(G) provides that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704. The rules referenced in this complaint were issued, adopted, or made under R.C. Chapter 3704.

27. Ohio Adm. Code Rule 3745-15-06(B) provides, *inter alia*, that in the event any emission source, air pollution control equipment, or related facility breaks down in such a manner as to cause the emission of air contaminants in violation of any applicable law, the person responsible for such equipment shall immediately notify the Ohio Environmental Protection Agency district office of such failure or breakdown.

28. On at least October 22, 1999 and January 12, 2000, Defendants failed to notify Ohio EPA South East District Office, of a malfunction of the emission control equipment for source F001 and F002.

29. Acts alleged in this count constitute violations of Ohio Adm. Code Rule 3745-15-06(B), and R.C. 3704.05(A) and G) for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendants are liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of the violation, pursuant to R.C. 3704.06(C).



COUNT THREE

AIR POLLUTION NUISANCE

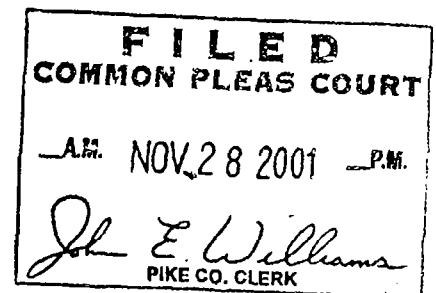
30. R.C. 3704.05(G) provides, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704. The rules referenced in this complaint were issued, adopted, or made under R.C. Chapter 3704.

31. R.C. 3704.05(A) provides, in part, that no person shall cause, permit, or allow the emission of an air contaminant in violation of any rule of the Director.

32. Ohio Adm. Code 3745-15-07(A) provides, *inter alia*, that no person shall cause an unlawful public nuisance, the emission or escape into the open air of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors or any other substances in such manner or in such amounts as to endanger the health, safety or welfare of the public.

33. On or about at least January 6, 2000; March 29, 2000; May 15, 2000; and April 14, 15, 16, 2001, Defendants permitted or allowed the emission or escape into the open air of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors or other substances in such manner or in such amounts as to endanger the health, safety or welfare of the public.

34. Acts alleged in this count constitute a violation of Ohio Adm. Code rule 3745-15-07(A) and R.C. 3704.05(A) and (G) for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendants are liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).



COUNT FOUR

VIOLATION OF DIRECTOR'S FINAL FINDINGS AND ORDERS

35. R.C. 3734.13 gives the director of environmental protection the authority to issue, modify, suspend, or revoke enforcement orders in accordance with Chapter 3745 of the Revised Code.

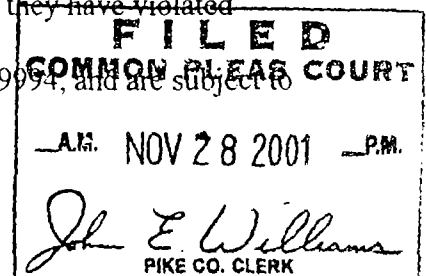
36. R.C. 3734.13(D) states that no person shall violate any term or condition of any order issued under section 3734.13 of the Revised Code.

37. On September 16, 1994, the Director of the Ohio Environmental Protection Agency issued Final Findings and Orders ("DFFOs") to Defendant Fred Miller, dba Miller Lumber Company pursuant to the authority vested in the Director of the Ohio EPA under Chapters 3734, 3704, 3745, and 6111 of the Ohio Revised Code.

38. The DFFOs state that "[t]hese Orders shall apply to and be binding upon the Respondent, the Owner, and the Operator of the Facility and their agents, servants, assigns, and successors in interest. No changes in ownership relating to the Site and/or Facility will in any way alter the Respondent's responsibilities under these Orders. The Respondent's obligations under these Orders may only be altered by the written approval of the Director of the Ohio EPA."

39. As of the date of this Complaint was filed, Defendants continue to be in violation of the DFFOs by failing to comply with Order #3 which requires the solid waste stockpiled at the Site to be reduced to storage piles no more than two and one-half (2.5) acres and to a maximum height of thirty (30) feet at the highest point of the storage piles.

40. Defendants are in violation of R.C. 3734.13(D) as they have violated terms and/or conditions of the DFFOs issued on September 16, 1994, and are subject to



an injunction, pursuant to R.C. 3734.10, to cease violating R.C. 3734.13(D) and are liable for civil penalties up to ten thousand dollars (\$10,000) per day per violation pursuant to R.C. 3734.13.

COUNT FIVE

VIOLATION OF PERMIT
PERMITTED STORAGE LIMITS EXCEEDED

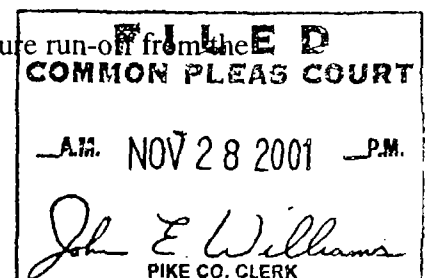
41. R.C. 3704.05(C) provides that no person who is the holder of a permit issued under division (F) or (G) of section 3704.03 of the Revised Code shall violate any of its terms or conditions.

42. On July 19, 1995, the Ohio EPA issued Miller Lumber Company a Permit-To-Install ("PTI"), with permit number 06-4142, which included "Additional Special Terms and Conditions." PTI 06-4142 was issued under R.C. 3704.03 (F) or (G) and Ohio Adm. Code 3745-31-02.

43. Additional Special Terms and Conditions #2 of the PTI required that after September 16, 1995, the total area and maximum height of the storage piles could not exceed 2.5 acres nor 30 feet in height.

44. As of the date of this Complaint was filed, Defendants continue to be in violation of Additional Special Terms and Conditions #2 of the PTI because the total area exceeds 2.5 acres the storage piles exceed 30 feet in height.

45. Additional Special Terms and Conditions #3 of the PTI required that within two hundred and seventy days (270) of the effective date of the PTI, any waste stored outside of the areas specified in the approved plans for storage piles shall either 1) be moved to within the areas specified in the approved plans to ensure run-off from the



storage piles is collected and contained in the surface water collection system and the collection ponds, or 2) be removed to a licensed solid waste disposal or transfer facility, a properly authorized location for land application or beneficial use, or a resource recovery facility.

46. Additional Special Terms and Conditions #3 of the PTI required that the old stockpile be completely removed by no later than April 14, 1996.

47. As of the date of this Complaint was filed, remnants of the old stockpile exist and surface water runoff from this area discharges into the adjacent stream.

48. Miller Lumber Company is currently in violation of Additional Special Terms and Conditions #3 of the PTI.

49. Acts alleged in this count constitute violations of PTI 06-4142, Ohio Adm. Code Rule 3745-31-05(A)(3), and R.C.3704.05(C) for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendants are liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of the violation, pursuant to R.C. 3704.06(C).

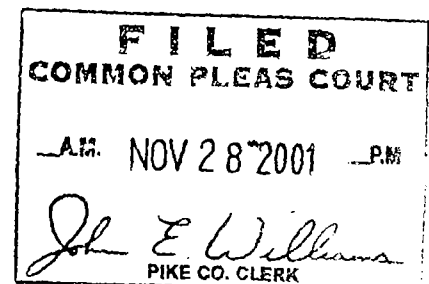
COUNT SIX

UNLAWFUL OPEN DUMPING

50. R.C. 3734.11(A) states that no person shall violate any section of R.C. Chapter 3734 or any rule adopted thereunder.

51. R.C. 3734.03 provides that no person shall dispose of solid wastes by open dumping.

52. R.C. 3734.01(F) defines "disposal" as the depositing, dumping, or placing of any solid wastes on any land or ground.



53. Ohio Adm. Code Rule 3745-27-05(C) states that no person shall conduct, permit, or allow open dumping.

54. R.C. 3734.01(I) defines "open dumping" to include the depositing of solid wastes onto the surface of the ground at a site that is not licensed as a solid waste facility under R.C. Chapter 3734.

55. As of the date of this Complaint was filed, Defendants have caused, permitted, and/or allowed woodwaste to be stored beyond the permitted storage limits which constitutes open dumping.

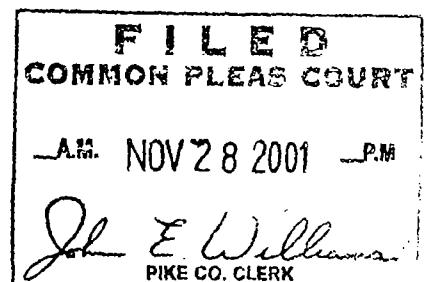
56. As of the date of this Complaint was filed, Defendants have caused, permitted, and/or allowed woodwaste to be deposited onto the surface of the ground in a manner that constitutes open dumping as defined in R.C. 3734.01(I) and, therefore, Defendants are in violation of R.C. 3734.03 and Ohio Adm. Code Rule 3745-27-05(C).

57. The conduct described in this count constitutes a violation of R.C. 3734.11(A) for which Defendants, pursuant to R.C. 3734.10, are subject to an injunction to cease violating R.C. 3734.11(A) and liable for civil penalties up to ten thousand dollars (\$10,000) per day per violation pursuant to R.C. 3734.13.

COUNT SEVEN

UNAUTHORIZED DISCHARGES

58. R.C. 6111.04 states that no person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued



a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending.

59. Beginning in March 1996, and continuing to the present, Defendants failed to properly maintain containment ponds and implement leachate management procedures which resulted in the discharge of leachate and surface water runoff into waters of the state without a NPDES permit.

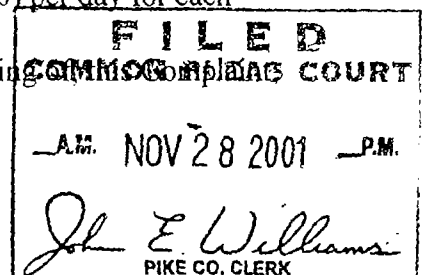
60. The unauthorized discharge of leachate into waters of the state is a violation of R.C. 6111.04.

61. The acts alleged in this count constitute violations of R.C. 6111.04 and R.C. 6111.07(A) for which defendant is subject to injunctive relief pursuant to R.C. 6111.07(B), and for which Defendant is liable to pay to the State a civil penalty up to ten thousand dollars (\$10,000) for each day of each violation pursuant to R.C. 6111.09.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

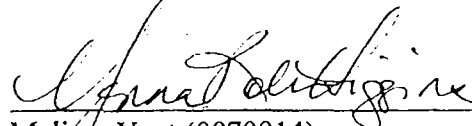
- A. issue a permanent injunction enjoining Defendants to comply with R.C. Chapters 3704, 3734, and 6111 and the regulations adopted thereunder, PTI 06-4142 and all subsequent modifications thereto, and the Director's Final Findings and Orders;
- B. order Defendants to pay all costs of this action;
- C. order Defendants, pursuant to R.C. 3704.06(C), to pay a civil penalty for the violations set forth in Counts One, Two, Three, and Five above in the amount of twenty-five thousand dollars (\$25,000.00) per day for each violation set forth in, and/or continuing after the filing of this Complaint.



- D. order Defendants, pursuant to R.C. 3734.13, to pay the State a civil penalty of up to ten thousand dollars (\$10,000) per day for the violations set forth in Counts Four and Six, including any violations occurring after the filing of this Complaint.
- E. order Defendants, pursuant to R.C. 6111.09, to pay the State a civil penalty of up to ten thousand dollars (\$10,000) per day for the violations set forth in Count Seven, including any violations occurring after the filing of this Complaint.
- F. retain jurisdiction of this action for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and grant such relief as may be just.

Respectfully submitted,

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



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